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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,272	01/28/2004	Thorsten Bechert	36403	3450

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/766,272

Applicant(s)

BECHERT ET AL.

Examiner

Jacqueline F. Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 30-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 30-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 6/19/06 have been fully considered but they are not persuasive. Applicant argues Hanke teaches the silver particles are applied to surfaces of fibers in an oily fluid and Hanke does not recognize the problem or solution of the silver particles being flushed away into deeper layers of the sanitary article. However, Hanke teaches his body care product is ideally suited for applications wherein during normal use the product is in contact with the human or animal skin for prolonged periods (paragraph 0012). Therefore, it is reasonable to conclude the product will be present for prolonged periods and not flushed away in use.

Applicant argues Hanke is used to provide a homogeneous dispersion of silver particles throughout a fluid matrix only and not to deposit silver particles onto the surface of any matrix. Hanke teaches the silver particles in a homogenous fluid matrix. However, Hanke teaches coating or impregnating the silver-containing fluid matrix on the part of the body care product contacting the skin (paragraph 0023). Hanke further teaches the liquid pervious topsheet and/or the liquid impervious backsheet is coated with the fluid organic matrix containing homogeneously dispersed silver nanoparticles (paragraph 0026). Therefore, the absorbent article of Hanke comprises silver physically attached exclusively to the surface as claimed.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 30-35, 37-39, 40-47, 49-52, 54, and 57-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Hanke EP 1066825.

As to claims 30-33, 37-39, 40, 42-47, 49, 51-52, 54, 57, 58, and 60-63, Hanke discloses an anti-microbial body product such as a disposable absorbent article (Abstract paragraph 0025) having chemically or physically attached metallic silver attached to a surface of a matrix (paragraph 0023). The matrix comprises synthetic fibers from the claimed group of fibers (paragraph 0018).

The silver nanoparticles have a particle size of about 5 nm (paragraph 0023). Hanke teaches a silver-containing liquid organic matrix used to coat the part of the body care product to impregnate the material (paragraph 0023). Hanke discloses the topsheet, core or backsheet is impregnated (paragraph 0025).

As to claims 34, 35, and 55, Hanke teaches the silver is applied at 1% -5% (paragraph 0039, 0046, 0052)

As to claims 41 and 59, Hanke discloses pulp and a superabsorbent in the article (paragraph 0029).

As to claim 50, Hanke discloses vacuum evaporation (paragraph 0023).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36, 48, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanke EP 1066825. Hanke discloses the claimed invention except Hanke does not specifically disclose the antimicrobial is detectable for not more than 24 hours.

However, Hanke disclose the silver nanoparticles in an amount on the surface to be effective but without causing user skin irritation, specifically in instances where the absorbent is in contact with the skin for a long period of time (paragraph 0027). Hanke does not disclose a specific time period, however, the general condition of the antimicrobial being effective for a long period of time is taught in Hanke, and where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation, In re Aller et al. 105 USPQ 233.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F Stephens
Primary Examiner
Art Unit 3761

September 5, 2006